

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHIRLEY ISON-NEWSOME,

Plaintiffs,

v.

**JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION,**

Defendant.

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Civil Action No. **3:22-CV-2805-L**

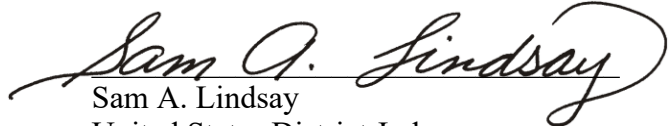
ORDER

On July 21, 2023, the Findings, Conclusions and Recommendation of the United States Magistrate Judge (Doc. 18) (“Report”) was entered, recommending that the court grant in part and deny in part Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint (“Motion to Dismiss”) (Doc. 12), filed February 16, 2023. Specifically, the Report recommends that the Motion to Dismiss, filed pursuant to Federal Rule of Civil Procedure 12(b)(6), be granted with respect to Plaintiff’s negligence, negligent undertaking, and fraud by nondisclosure claims, which should be dismissed with prejudice as preempted by Article 4A of the Uniform Commercial Code. The Report recommends that the Motion to Dismiss should be denied in all other respects. As a result of this recommendation, only Plaintiff’s claims for fraudulent representation and breach of contract would remain.* No objections to the Report were filed before expiration of the deadline to object.

* The Report notes that Plaintiff asserts in response to the Motion to Dismiss that, even if her claims are preempted by Article 4A and subject to preclusion, they should not be dismissed because Defendants have not complied with Article 4A. To this, the magistrate judge determined that, because Plaintiff’s Amended Complaint contains no claim for alleged violation of Article 4A, any such claim is not properly before the court and cannot provide a basis for defeating the Motion to Dismiss as a result of Plaintiff raising the claim or issue for the first time in response to the Motion to Dismiss. The magistrate judge is correct. This claim is not before the court and, therefore, does not affect the resolution of the Motion to Dismiss. If Plaintiff wishes to amend her pleadings to include a claim against Defendant for alleged violation of Article 4A, she will need to file a motion for leave to amend her pleadings pursuant to Federal Rule of Civil Procedure 15(a)(2).

Having considered the Motion to Dismiss, briefs, pleadings, the file, Report, and record in this case, the court determines that the magistrate judge's findings and conclusions are correct, and **accepts** them as those of the court. Accordingly, the court **grants in part and denies in part** Defendant's Motion to Dismiss (Doc. 12). The Motion to Dismiss is **granted** with respect to Plaintiff's negligence, negligent undertaking, and fraud by nondisclosure claims, which are preempted and **dismissed with prejudice** pursuant to Rule 12(b)(6). The Motion to Dismiss is **denied** with respect to Plaintiff's remaining claims for fraudulent representation and breach of contract.

It is so ordered this 7th day of August, 2023.


Sam A. Lindsay
United States District Judge